

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3630/2017

Smt. Banobee wd/o Shaikh Rahman and others

...Versus...

Smt. Pyari Begum wd/o Sk. Gafoor (Deceased)

Smt. Qamrunnisa Jahan Begum d/o Sk. Gafoor and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri N.A. Vyawahare, Advocate for petitioners
Shri S.B. Mohta, Advocate for respondent nos.2, 3-C, D, 4A, B, 5 & 7A to C

CORAM : AVINASH G. GHAROTE, J.

DATE : 05/04/2023

1. Heard Shri Vyawahare, learned counsel for the petitioners and Shri Mohta, learned counsel for the respondent nos.2, 3-C, D, 4A, B, 5 and 7A to C. None appears for rest of the respondents, though served.

2. The petition challenges the order dated 18/06/2016 passed below Exh.1 by the learned Trial Court, whereby the final decree proceedings, styled as 'M.J.C. No.114/1981' was disposed of holding that the decree was fully satisfied, in spite of the fact that the objector/petitioner herein has raised an objection therein under Order 21 Rule 97 of the Code of Civil Procedure vide Exh.67 which was allowed on 03/08/2005 (pg.23) by permitting the petitioner/objector to

adduce his evidence, if any, in support of his objection on the question relating to his right, title, possession or interest in the suit property, in pursuance to which, the petitioner/objector had led evidence. Without deciding the objection, the M.J.C. has been disposed of as being fully satisfied. This is clearly not permissible as the Court itself had found favour with the right of the petitioner/objector, to adduce evidence regarding his objection, which was indeed led, and therefore, there was an obligation upon the Court to decide the objection at Exh.67 one way or the other, without which, the proceedings could not have been disposed of finally.

3. In that view of the matter, the impugned order dated 18/06/2016 is hereby quashed and set aside and the matter is remitted back to the learned Trial Court for deciding the objection of the petitioner/objector below Exh.67 and then disposing of M.J.C. No.114/1981, as per law.

4. The writ petition is allowed in the aforesaid terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar